IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No. 4472 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE K.A.PUJ

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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MAYANKBHAIKIRTIBHAIMACHHAR - Applicant(s)

Versus

BABUBHAIAMBALALPATEL & 1 - Respondent(s)

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Appearance :

MR DR BHATT for Applicant(s) : 1,
MR MB RANA for Respondent(s) : 1,
MR HL JANI for Respondent(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE K.A.PUJ

Date : 04/10/2005

ORAL JUDGMENT

1.Rule. Mr. H.L. Jani, learned Assistant Public Prosecutor appearing for the respondent no.2 State and Mr. M.B. Rana, learned advocate appearing for the

respondent no.1/ original complainant waives service of rule on behalf of the respective respondents. At the request of the respective parties the matter is taken up for final hearing.

2.The present petition is filed under Section 482 of the Criminal Procedure Code praying for quashing and setting aside the complaint being Criminal Case no. 7457/04 in the court of 3rd Jt. Judicial Magistrate, First Class, Ahmedabad(Rural) qua the petitioner.

3.It is the case of the petitioner that the petitioner has not committed any offence whatsoever under Sections 138 and 142 of the Negotiable Instruments Act and prima facie no offence can be made out against the petitioner under the provisions of Sec. 138 and 142 of N.I Act. It is further stated that cheque no. 182627 drawn on Punjab National Bank has not been signed by the petitioner but as per respondent no. 1's own admission, the said cheque has been signed by the wife of the petitioner in her individual capacity and the petitioner is not the account holder. It is further stated that the petitioner has no relation or nexus with the issuance of the cheque and therefore the petitioner has not committed any offence and hence the complaint is required to be quashed and set

aside.

4.This court has issued a notice on 12th July 2005 and ad interim relief was granted staying further proceedings of Criminal Case No. 6457/04 pending in the court of 3rd Judicial Magistrate, First Class, Ahmedabad (Rural) so far as it relates to petitioner only. The court has also made it clear that it is open for the learned Magistrate to proceed in accordance with law against the wife of the petitioner being accused no. 1 unless the said proceedings are stayed by the competent court.

5.Mr.M.B. Rana, learned advocate appearing for the respondent no.1 submits that because of the pendency of this petition and stay qua the husband granted by this court, the proceedings before the learned Magistrate could not be proceeded further, the accused no.1 wife is not appearing before the court. He has further submitted that the present petitioner has given an understanding that with his knowledge the cheque was given by the respondent no. 1 and hence the petitioner is also held responsible for the offence committed by him under Section 138 read with Section 142 of the Criminal Procedure Code. He further submitted that the present petition is required to be dismissed.

6.After having heard the learned advocates appearing for the respective parties and after having gone through the present petition as well as complaint, the court is of the view that admittedly the cheque has not been signed by the present petitioner. The present petitioner is not in any way connected with the issue of the said cheque. The cheque was issued by the accused no.1 wife from her individual account and it has been signed by her and hence the petitioner may not be held responsible for an offence committed under Sec. 138 read with Sec.142 of the Negotiable Instruments Act.

7.Looking to the facts and circumstances of the present case and considering the clear provisions of the Act, the court is of the view that the present petition is required to be allowed and it is accordingly allowed.

8.It is however, made clear that by virtue of the present order, the respondent no.1/original complainant can proceed with the complaint qua the accused no.1. The wife of the present petitioner has admittedly issued the cheque signed by her and it is given from her own account. In any case, this decision will not come in the

way of the respondent no.1 from pursuing the said complaint against the accused no.1. The learned Magistrate is, therefore, directed to proceed with the complaint against the accused no.1 forthwith. It is open for the respondent no.1 to resort to any other legal remedies, available to him under the law against the present petitioner.

9.Subject to the aforesaid observations and directions this petition is accordingly disposed off. Rule made absolute to the above extent without any order as to costs.

(K.A. PUJ, J.)

Divya//